STATE OF MICHIGAN

COURT OF APPEALS

HENDERSON ELECTRIC, INC.,	UNPUBLISHED May 15, 2007
Plaintiff-Appellee,	
v	No. 274089 Court of Claims
DEPARTMENT OF TREASURY,	LC No. 05-000125-MT
Defendant-Appellant.	

Before: Markey, P.J., and Sawyer and Bandstra, JJ.

PER CURIAM.

Defendant appeals by right from an order entered by the Court of Claims granting summary disposition under MCR 2.116(C)(10) in favor of plaintiff. That order overturned defendant's assessment of use tax concerning plaintiff's alleged use of some generators during the tax period of August 1, 1999 through January 31, 2000.[1] We affirm.

In May 1999, Motor City Electric (Motor City) contracted with the City of Detroit Water and Sewage Department (the DWS) to provide the DWS with emergency electric generators as a backup to its electrical system. Sometime thereafter, Motor City asked plaintiff, as a subcontractor, to procure and install the 44 electric generators on behalf of Motor City. Ultimately, plaintiff contracted with Motor City to purchase and then resell the generators to Motor City. Plaintiff then purchased the generators from Michigan Caterpillar Company (Michigan Caterpillar) and gave Michigan Caterpillar an exemption certificate in regard to sales tax. Plaintiff then resold the generators to Motor City, which provided plaintiff with a sales tax exemption certification for resale at retail. The generators were resold to the DWS; plaintiff did not participate in their installation. In 2002, plaintiff was audited and later assessed use tax concerning the generators in issue. Pursuant to plaintiff's request under MCL 205.21, an informal conference was held. Defendant later affirmed the assessment, and plaintiff paid the amount due under protest. Plaintiff then filed a complaint in the Court of Claims, alleging that the use tax assessment was improper. The Court of Claims agreed, and this appeal followed.

[1] The statutes cited in this opinion are those that were in effect during this tax period.

We review de novo a trial court's decision on a motion for summary disposition and questions of statutory interpretation. *Griffith v State Farm Mut Automobile Ins Co*, 472 Mich 521, 525-526; 697 NW2d 895 (2005); *Corley v Detroit Bd of Ed*, 470 Mich 274, 277; 681 NW2d 342 (2004). A motion for summary disposition under MCR 2.116(C)(10) tests the factual sufficiency of the complaint. *Corley*, *supra* at 278. The motion should be granted if there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. *Id*. A genuine issue of material fact exists when, giving the benefit of reasonable doubt to the opposing party, the record leaves open an issue upon which reasonable minds could differ. *West v Gen Motors Corp*, 469 Mich 177, 183; 665 NW2d 468 (2003). The primary goal of statutory interpretation is to ascertain and give effect to the intent of the Legislature, and the Legislature is presumed to have intended the meaning it plainly expressed. *Linsell v Applied Handling, Inc*, 266 Mich App 1, 15; 697 NW2d 913 (2005). If statutory language is clear and unambiguous, then a court is required to apply the statute as written. *Id.* A court may consult a dictionary for definitions to undefined statutory terms. *Griffith, supra* at 526.

This Court in *Betten Auto Ctr, Inc v Dep't of Treasury*, 272 Mich App 14, 18-20; 723 NW2d 914 (2006) set forth the legal principles involved when reviewing whether use tax was properly assessed:

> Michigan has enacted the Use Tax Act, MCL 205.91 *et seq.* The use tax "complements the sales tax and is designed to cover those transactions not covered by Michigan's General Sales Tax Act[, MCL 205.51, *et seq.*]." *WPGP1, Inc v Dep't of Treasury*, 240 Mich App 414, 416; 612 NW2d 432 (2000). Under the Use Tax Act, a use tax is imposed "for the privilege of using, storing, or consuming tangible personal property in this state at a rate equal to 6% of the price of the property or services specified . . . ." MCL 205.93(1). The Use Tax Act places the ultimate liability on the consumer. MCL 205.97; *World Book, Inc v Dep't of Treasury*, 459 Mich 403, 408, 415-416; 590 NW2d 293 (1999). The term "use" is defined broadly to include "the exercise of a right or power over tangible personal property incident to the ownership of that property including transfer of the property in a transaction where possession is given." MCL 205.92(b). . . .
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> "*[T]ax exemptions* are strictly construed against the taxpayer and in favor of the taxing authority." *Nomads, Inc v Romulus*, 154 Mich App 46, 55; 397 NW2d 210 (1986) (emphasis in original). "Since taxation is the rule and exemption the exception, the intention to make an exemption must be expressed in clear and unambiguous terms." *Id.* Because tax exemptions are disfavored, the taxpayer has the burden of proving entitlement to a tax exemption. *Elias Bros Restaurants, Inc v Treasury Dep't*, 452 Mich 144, 150; 549 NW2d 837 (1996).

There is no dispute that plaintiff "used" the generators as defined under MCL 205.92(b). But MCL 205.94(1)(c) provided and continues to provide that "[p]roperty purchased for resale" is exempt from use tax. "[T]he plain meaning of the phrase 'purchased *for resale*' conveys a legislative intent inconsistent with purchase for another purpose." *People v Rodriguez*, 463 Mich 466, 472; 620 NW2d 13 (2000) (emphasis in original). Case law indicates that the purchaser's

intent at the time of the purchase is controlling for purposes of determining whether the exemption has been met. See, e.g., *id.* at 468, 473 (concluding that under the above exemption, the defendant would have been exempt from use tax, and, therefore, not guilty of tax evasion, if the jury had believed that he acquired the vehicles in question with the intent of holding them just long enough to do necessary repairs and then selling them); *Betten Auto Ctr, Inc*, *supra* at 20-21 (concluding that the dealerships that had purchased vehicles as inventory for ultimate resale were exempt from use tax under the above exemption).

Here, it is undisputed that plaintiff intended to and did resell the generators to Motor City. In fact, defendant admitted as much in its supplemental answer to plaintiff's interrogatories. A taxpayer's intent at the time of purchase plainly is a question of fact, and, in that regard, the parties' essentially made a binding stipulation as to what plaintiff's intent was when it purchased the generators in question. See *Gates v Gates*, 256 Mich App 420, 426; 664 NW2d 231 (2003) (concluding that stipulations of fact are binding). Accordingly, the use tax exemption under MCL 205.94(1)(c) applies to the transaction in question because plaintiff purchased the generators with the intent of reselling them.

Additionally, plaintiff did not owe any sales tax concerning the generators in issue under MCL 205.52. That statute provided as follows:

> (1) Except as provided in section 2a, there is levied upon and there shall be collected from *all persons engaged in the business of making sales at retail*, as defined in section 1, an annual tax for the privilege of engaging in *that business* equal to 6% of the gross proceeds of the business, plus the penalty and interest if applicable as provided by law, less deductions allowed by this act. [Emphasis added.]

MCL 205.51(1) provided a comprehensive definitional section for determining the meaning of "sale at retail," but the relevant subsection provided in part as follows:

> (b) "Sale at retail" means a transaction by which the ownership of tangible personal property is transferred for consideration, if the transfer is made in the ordinary course of the transferor's business and is made to the transferee for consumption or use, or for any purpose other than for resale . . . . [MCL 205.51(1)(b).]

Thus, under the plain language of the above statues, sales tax was only assessed against gross proceeds of those transactions that fell within the relevant definitional section of a "sale at retail". It effectively exempted those transactions that were intended for resale as provided under MCL 205.51(1)(b). Moreover, defendant's published guidance also supports this interpretation. Revenue Administrative Bulletin 1996-6 (RAB 96-6).[2] There is no dispute that the generators in question were transferred to Motor City for the purpose of resale to the DWS and were, in fact,

[2] This RAB was in effect for purposes of the relevant assessment period.

resold to the DWS. Accordingly, plaintiff was also not subject to sales tax concerning the generators in issue because Motor City intended on reselling them to the DWS.

Defendant argues that Motor City was the "consumer" of the generators as defined in MCL 205.92(g) of the Use Tax Act. Even assuming that the relevant definition is persuasive for purposes of interpreting the term "consumption" as used in the definitional section of MCL 205.51(1)(b) and that Motor City consumed the generators by installing them for the DWS, this does not negate the fact that the transaction did not involve a retail sale because the generators were sold to Motor City for resale. Thus, MCL 205.51(1)(b) and MCL 205.52(1) exempted the sale from being subject to sales tax.

Defendant next argues that plaintiff did not act as a wholesaler concerning the transaction in issue, relying on its published guidance under RAB 96-6 that wholesalers are exempt from sales tax. While an RAB constitutes defendant's interpretation of the relevant statutes, it does not carry the force of law. *Catalina Marketing Sales Corp v Dep't of Treasury*, 470 Mich 13, 21; 678 NW2d 619 (2004). In pertinent part, RAB 96-6 provides that "sales of property intended for resale are exempt." That RAB further provides:

> Retailers in Michigan are issued sales tax license numbers. The purchaser's sales tax license number must also be included on the exemption form.
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> Wholesalers, **that make no retail sales**, are not licensed with the Department and are not issued numbers. Wholesalers buying for resale should indicate on the Certificate of Exemption, any exemption certificate contained in an Administrative Rule, the Uniform Sales and Use Tax Certificate approved by the Multistate Tax Commission, or purchase order (where applicable) "For resale at wholesale."

Defendant argues that plaintiff did not act as a wholesaler under the ordinary meaning of the term when it purchased and later resold the generators in issue. But regardless if this is true, RAB 96-6 also provides that a sale of property intended for resale is exempt from sales tax. As we have already concluded, the subject transaction met this exemption, so whether plaintiff acted as a wholesaler is irrelevant.

Defendant finally argues that because plaintiff failed to obtain a sales tax license and failed to register for payment of use tax, it was unable to claim an exemption for the underlying transaction. MCL 205.95(a) of the Use Tax Act provided as follows:

> Every person when engaged in the business of selling tangible personal property for storage, use or other consumption in this state, shall register with the department and give the name and address of each agent operating in this state, the location of any and all distribution or sales houses or offices, or other places of business in this state and such other information as the department may require with respect to matters pertinent to the enforcement of this act, but it shall not be necessary for a *seller holding a license* obtained pursuant to the provisions of Act No. 167 of the Public Acts of 1933, as amended, to register with the department as provided in this act. Every such seller shall collect the tax imposed by this act from the consumer. [Emphasis added.]

The license mentioned in the statute is a sales tax license as required under MCL 205.53 of the General Sales Tax. Thus, use tax registration is only required if a taxpayer was "engaged in the business of selling tangible personal property for storage, use or other consumption in this state" and that taxpayer did not have a sales tax license.

Defendant relies on *Shaw Aviation, Inc, v Dep't of Treasury*, unpublished opinion per curiam of the Court of Appeals, issued April 20, 2006 (Docket No. 259413), for the proposition that plaintiff was required to be either licensed or registered to claim the relevant exemptions. However, there is nothing in the decision to indicate as much, and neither the General Sales Tax Act nor the Use Tax Act provides that an exemption is unavailable if the taxpayer fails to obtain a sales tax license or fails to register for use tax. Moreover, although we may consider for its persuasive value an unpublished case of this court, we do not find this case persuasive. "[A] court may read nothing into an unambiguous statute that is not within the manifest intent of the Legislature as derived from the words of the statute itself." *Roberts v Mecosta Co Gen Hosp*, 466 Mich 57, 63; 642 NW2d 663 (2002). Had the Legislature intended to prohibit an exemption if the requisite license or registration had not occurred, it could have expressly stated so. Accordingly, we reject defendant's argument.

We affirm.

/s/ Jane E. Markey
/s/ David H. Sawyer
/s/ Richard A. Bandstra